

The specific tax liability of modular or manufactured home dealers depends upon whether they act as retailers or construction contractors in their transactions. See 86 Ill. Adm. Code 130.2075. (This is a GIL).

August 26, 1999

Dear Xxxxx:

This letter is in response to your letter dated July 1, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

HERE IS THE ISSUE....I NEED CLARIFY.

I WOULD BE A MODULAR HOMES DEALER. HOMES ARE BUILT IN [STATE]. THEY ARE PRESOLD TO MY CUSTOMERS. [STATE] SHIPS HOME TO ILLINOIS AND THEY ARE PLACED ON FOUNDATIONS, THEY ARE NOW REAL ESTATE, NOT TANGIBLE PROPERTY. SO THE QUESTIONS ARISES.....HOW DO WE PAY THE TAX? SOME MANUFACTURER'S SHOW A PERCENTAGE OF SALES TAX DUE ILLINOIS AS 3.7%, THE THING IS THEY THEREFORE CONSIDER 6.3OR 63% IS LABOR AND 37% MATERIAL.....SO PAY TAX ON 37%????? SEE SECT 130.275 #4 SALES OIF TANGIBE ET AL

IS THIS ENOUGH INFO FOR YOU TO RENDER A PLAN THAT SHOULD ANSWER OUR QUESTION? OTHETR MFG SAY 60/40 TAKE 60% OF COST AND TAX AT THAT RATE THESE ARE HOMES, NOT MOBILE, OR STEEL FRAME HOMES, THESE ARE BUILT OUT OF WOOD.

TALKED WITH KIM A GENTLEMEN FROM YOUR DEPT 06-30-99. HE BELIEVES THE PERCENTASGE AS DECLARED BY MFG WOULD BE FORMAT.e\$100,000 sale Invoice 60%labor 40% mat or vice versa pay tax on 40 or 60 @6.25. help!!!!

We do not have sufficient information to respond to your inquiry. The manner in which modular home sales are taxed must take into account many specific facts, including the exact activities of all parties. Your letter does not contain this type of information. However, we hope the following general information is helpful.

The specific tax liability of modular or manufactured home dealers depends upon whether they act as retailers or construction contractors in their transactions. Enclosed is a copy of 86 Ill. Adm. Code 130.2075 concerning the taxation of construction contractors. In Illinois, construction contractors are

deemed to be the end users of the building materials (which can include modular, manufactured, or pre-fabricated housing units) that they take off the market and permanently affix to real estate. A modular, manufactured, or pre-fabricated housing unit is permanently affixed to real estate when it is permanently attached to a foundation in a manner similar to an on-site built house. Contractors permanently affixing modular, manufactured, or pre-fabricated housing units to real estate incur a Use Tax liability on their cost price of the materials permanently affixed to real estate. The Use Tax rate is 6.25%.

Illinois retailers making such sales to contractors also incur Retailers' Occupation Tax on the gross receipts from the sales of these building materials to the contractors and are required to collect the Use Tax from them. Thus, contractors having contracts with customers to sell and permanently affix modular, manufactured, or pre-fabricated homes incur a Use Tax liability on their cost price of materials permanently affixed to real estate. If the contractors do not remit this tax to Illinois registered suppliers, the contractors must register and self-assess and remit the Use Tax to the Department. See 86 Ill. Adm. Code 130.2075, enclosed. Please note that sales by construction contractors to customers of completed, permanently affixed dwellings are sales of real property and are not taxed under the Illinois sales tax laws.

In contrast, if Illinois sellers of modular, manufactured, or pre-fabricated homes do not have contracts with purchasers to permanently affix such homes to real estate, they do not act as construction contractors and do not incur a Use Tax liability. Rather, they act as retailers of tangible personal property and incur a Retailers' Occupation Tax liability on 100% of the selling price and must collect the corresponding Use Tax from their purchasers unless an exemption applies (e.g., a sale for resale would occur if the purchaser resells the home to a contractor). These types of transactions are treated as "over-the-counter" retail sales of the pre-fabricated units. The Retailers' Occupation Tax rate is 6.25% plus applicable local taxes.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel